



U.S. Citizenship  
and Immigration  
Services

#6

Date: **NOV 07 2012** Office: CIUDAD JUAREZ, MEXICO

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for attempting to procure admission to the United States by falsely claiming U.S. citizenship; and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and the father of two U.S. citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(9)(B)(v), in order to reside in the United States with his spouse and children.

The Field Office Director found the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming to be a U.S. citizen, that no waiver of that statute was available, and he denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 27, 2010.

On appeal, the applicant claims that he did not claim to be a U.S. citizen at the U.S.-Mexico border on June 25, 2001; however, he cannot prove he was in the United States that day. *Applicant's statement, attached to Form I-290B, Notice of Appeal or Motion*, dated August 14, 2010. The applicant also submits new evidence of hardship on appeal.

The record includes, but is not limited to, statements from the applicant's wife, letters of support, medical documents for the applicant's wife and children, and documents pertaining to the applicant's misrepresentation. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

....

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

- (v) Waiver.—The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- (ii) Falsely claiming citizenship.—
  - (I) In general  
  
Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.
  - (II) Exception  
  
In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.
- (iii) Waiver authorized.—For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such

immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

In the present application, the record indicates that in 1993, the applicant entered the United States without inspection. On an unknown date, the applicant departed the United States. On June 25, 2001, the applicant, as a minor, applied for admission to the United States at the [REDACTED] by declaring to be a U.S. citizen. When an immigration official suspected that the applicant was not a U.S. citizen and referred him to secondary inspection, the applicant, in a sworn statement, admitted his true name and immigration status. He was then allowed to return to [REDACTED]. On an unknown date, the applicant reentered the United States without inspection. In January 2010, the applicant departed the United States.

On appeal, the applicant asserts that he did not claim to be a U.S. citizen on June 25, 2001. He has no proof of being in the United States then and asks to have his fingerprints compared with those of “the person detained” that day. A fingerprint comparison, however, is unnecessary, because the record establishes that the person who falsely claimed U.S. citizenship at the [REDACTED] of Entry in [REDACTED] on June 25, 2001 is the applicant. During his sworn statement taken on June 25, 2001, questions were asked regarding his parents, date of birth, place of birth, and his arrest by the Commerce City Police department, and the answers are the same as information contained in his Form I-130, his Biographic Information sheet (Form G-325A), and Commerce City Municipal Court documents. Additionally, the signature on the sworn statement is the same as the applicant’s signature on other documents in the record. Therefore, as a result of his false claim to U.S. citizenship, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act.<sup>1</sup>

Aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See Sections 212(a)(6)(C)(ii) and (iii) of the Act. As the applicant’s false claim to U.S. citizenship occurred after September 30, 1996, the applicant is not eligible for a waiver under section 212(a)(6)(C)(iii) of the Act.

The record establishes that at the time of his claim to U.S. citizenship, the applicant was a 17 year-old minor. In considering whether a claim to U.S. citizenship made by a minor bars his admission to the United States under section 212(a)(6)(C) of the Act, the AAO has sought guidance in precedent decisions that have addressed the inadmissibility of minors whose parents have fraudulently claimed immigration benefits. While we are aware of no decisions published by the Board of Immigration Appeals (Board) that have relied on age as a dispositive factor in determining a child’s culpability in instances of parental fraud or misrepresentation under section 212(a)(6)(C) of the Act, we find that several circuit courts have considered the issue in dealing with cases involving immigration fraud.

In *Singh v. Gonzales*, the Sixth Circuit Court of Appeals (Sixth Circuit) found that the immigration fraud committed by the parents of a five-year-old child could not be imputed to her as fraudulent conduct “necessarily includes both knowledge of falsity and an intent to deceive” and requires proof of such. 451

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<sup>1</sup> The AAO will not address whether the applicant also is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, because his inadmissibility under section 212(a)(6)(C)(ii) renders him ineligible to apply for a waiver.

F.3d 400, 407 (6<sup>th</sup> Cir. 2006). The Sixth Circuit found that imputing fraud to a five-year-old child was “even further beyond the pale,” than imputing a parent’s negligence to that child. *Id.* at 407. However, in *Malik v. Mukasey*, the Seventh Circuit Court of Appeals (Seventh Circuit) found that two 17-year-old brothers whose father had misrepresented their identities, nationality, and religious affiliation when he listed them as derivatives on his asylum application, could be held accountable for that fraud. While the brothers contended that the immigration judge had erred by imputing their father’s fraud to them, the court concluded that the brothers “given their ages at the time” were accountable for the misrepresentations. The court also indicated in its opinion that the Board had previously acknowledged that while the brothers were young at the time their father filed for asylum, “they were old enough to know better and to be held accountable for their actions.” 546 F.3d 890, 892-893 (7<sup>th</sup> Cir. 2008). In deciding the case, the Seventh Circuit specifically noted that young was a “relative term and that “[b]eing over 16 - and eligible for a driver’s license – is quite different than being 10.” *Id.* at 892.

The applicant in the present case was 17 years old when he represented himself to be a U.S. citizen. The record reflects that the applicant was aware that he was not a U.S. citizen and understood his actions were illegal. When questioned under oath, the applicant asserted affirmatively that he understood that it was illegal to attempt to enter the United States by falsely declaring to be a U.S. citizen, and he also stated his date and place of birth. Additionally, the applicant does not meet any of the exceptions under 212(a)(6)(C)(ii)(II), as the record reflects that the applicant did not permanently reside in the United States and knew he was a citizen of Mexico at the time of his misrepresentations. *See Form I-867B, Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act*, dated June 25, 2001.

The AAO finds that because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his qualifying relative or whether he merits the waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.